

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Thus, claim 1 has been amended to limit the definition for X to -CH₂-, limit the definition for R¹ to that set forth in claim 5 (except omitting "naphthyl and cyclohexenophenyl"), and limit the definitions for R² - R⁵ to those set forth in claim 4.

As a result of these amendments to claim 1, claims 2-5 have been cancelled.

Claim 7 has been amended to place it in more conventional form according to U.S. practice, by requiring a pharmaceutically inert excipient, based on the disclosure at page 17, line 4 of the specification.

Claims 8 and 10 have been amended to depend only on claim 1, in view of the cancellation of claim 2.

Applicants respectfully submit that these amendments should be entered, even though they are presented after a final rejection, because the effect of the amendments is to clearly place the application in condition for allowance.

The patentability of the presently claimed invention over the disclosure of the reference relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Thus, the rejection of claims 1-7 under 35 U.S.C. §102(b) as being anticipated by Goeschke et al. is respectfully traversed.

Although Applicants respectfully disagree with the Examiner's interpretation of the proviso in claim 1, copied by the Examiner at the top of page 4 of the Office Action, amended claim 1 as set forth above no longer includes naphthyl or cyclohexenophenyl under the definition for R¹ as a result of which the prior art rejection should be withdrawn.

The rejection of claims 1-7 under the first paragraph of 35 U.S.C. §112 is respectfully traversed.

In response to the Examiner's position concerning Applicants' previous arguments against this rejection, Applicants are submitting a Rule 132 Declaration herewith, by Dr. Mah, one of the present inventors. Applicants respectfully submit that in view of the Declaration, together with the limited scope of the claimed compounds as reflected by the foregoing amendments to claim 1, the rejection under the first paragraph of 35 U.S.C. §112 should be withdrawn.

Referring to the provisional rejection of claims 1-7 based on the claims of Serial No. 11/992,132, as set forth by the Examiner on page 5 of the Office Action, Applicants again respectfully request that this rejection be held in abeyance, pending an indication that the claims of the present application are otherwise in condition for allowance. Applicants also note that, once the current rejections in the present application are overcome, the double patenting rejection should be withdrawn in accordance with current PTO practice, since the present application has an earlier filing date than the '132 application.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

Peter HEROLD et al.

By /Michael R. Davis/

Digitally signed by /Michael R. Davis/
DN: cn=/Michael R. Davis/, o=WLP, ou,
email=mdavis@wenderoth.com, c=US
Date: 2010.07.02 13:41:35 -04'00'

Michael R. Davis
Registration No. 25,134
Attorney for Applicants

MRD/pth
Washington, D.C. 20005-1503
Telephone (202) 721-8200
Facsimile (202) 721-8250
July 2, 2010